

WHITE & CASE LLP
Wachovia Financial Center
200 South Biscayne Blvd., Suite 4900
Miami, Florida 33131
(305) 371-2700
John K. Cunningham (JC-4661)
Frank L. Eaton (FE-1522)

Attorneys for Ahold USA, LLC

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re)	
)	Chapter 11
)	
THE GREAT ATLANTIC & PACIFIC TEA)	Case No. 10-24549 (RDD)
COMPANY, INC., <u>et al.</u> ,)	
)	Jointly Administered
Debtors.)	
)	Re: Docket No. 1719

**AHOLD USA, LLC'S RESPONSE AND RESERVATION OF RIGHTS TO
DEBTORS' MOTION FOR ENTRY OF AN ORDER (I) APPROVING SALE OF
LOT 1 AND LOT 2 SUPERFRESH STORES TO MRS. GREENS MANAGEMENT
CORPORATION AND VILLAGE SUPER MARKET INC. FREE AND CLEAR OF
LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS, (II) THE
ASSUMPTION AND ASSIGNMENT OF CERTAIN UNEXPIRED LEASES IN
CONNECTION THEREWITH, AND (III) GRANTING RELATED RELIEF**

Ahold USA, LLC and its affiliates (collectively, "Ahold"), a creditor and party in interest in the above-captioned chapter 11 cases (the "Chapter 11 Cases") of The Great Atlantic & Pacific Tea Company, Inc. ("A&P") and its affiliated debtors (collectively, the "Debtors"),¹ hereby files this response and reservation of rights (the "Response") to the Debtors' Motion for Entry of an Order (i) Approving Sale of Lot 1 and Lot 2 SuperFresh Stores to Mrs. Greens Management Corporation and Village Super Market Inc. Free and Clear of Liens, Claims, Encumbrances, and Other Interests, (ii) the Assumption and Assignment of Certain Unexpired

¹ Ahold will be filing proofs of claim against the Debtors on or prior to the June 17, 2011 claims bar date established in the Chapter 11 Cases.

Leases in Connection Therewith, and (iii) Granting Related Relief [Docket No. 1719] (the “Motion”).² In support of this Response, Ahold respectfully represents as follows:

BACKGROUND

1. On March 23, 2009, each of the Debtors filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101, et seq. (the “Bankruptcy Code”), thereby commencing the Chapter 11 Cases. On December 21, 2010, the United States Trustee appointed the Official Committee of Unsecured Creditors (the “Creditors’ Committee”).

2. On May 2, 2011, the Court entered an order [Docket No. 1478] establishing bidding procedures to govern the sale of the assets of certain of the Debtors’ SuperFresh banner stores located in the Maryland/D.C. area (the “Southern Stores”) and scheduling an auction in connection therewith for May 17, 2011 (the “Auction”).

3. On May 13, 2011, Giant of Maryland, LLC (“Giant”), a subsidiary of Ahold, submitted a bid for four of the Southern Stores (the “Lot 1 Stores”). Thereafter, the Debtors qualified Giant as the lead bidder for the Lot 1 Stores pursuant to an asset purchase agreement (the “Giant APA”) under which Giant would purchase the Lot 1 Stores (subject to the terms of the Giant APA) for an initial bid of \$18.5 million, which also provided for the assumption and assignment to Giant of each of the collective bargaining agreements that governed the Lot 1 Stores (each, a “CBA”).

4. Following the announcement of Giant’s lead bid at the Auction on May 17, 2011, a joint venture by Mrs. Greens Management Corp. and Village Super Market Inc. (collectively, the “JV Buyers”) offered a combined bid for the Lot 1 Stores subject to negotiation

² Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

and documentation of an asset purchase agreement at \$19.7 million. The Debtors then adjourned the Auction and negotiated an asset purchase agreement under which the JV Buyers would become the new lead bid for the Lot 1 Stores.

5. The Debtors resumed the Auction the following day on May 18, 2011. After both Giant and the JV Buyers participated in several rounds of bidding for the Lot 1 Stores, the Debtors designated the JV Buyers as the Successful Bidder pursuant to an asset purchase agreement (the “JV Buyers’ APA”) that provided a purchase price of up to \$24.5 million for the Lot 1 Stores (the “JV Bid”). The Debtors also declared Giant as the Backup Bidder pursuant to the Giant APA with a bid of \$24 million (the “Giant Bid”).

6. Unlike the Giant APA, the JV Buyers’ APA does not provide for the assumption and assignment of the CBAs. Instead, it contemplates that the JV Buyers will negotiate with the Union to enter into a new CBA and, if an agreement is reached prior to the objection deadline to the Motion, the JV Buyers will receive a \$200,000 purchase price reduction at closing. However, in the event the JV Buyers do not agree on a new CBA with the Union, the Debtors propose to reject the CBAs related to the Lot 1 Stores. Further, the Motion provides that in such case, the Debtors would seek to have the Motion “construed as an application for relief under section 1113 of the Bankruptcy Code, to the extent this provision applies to the Sale of these assets around which the Debtors are not reorganizing.” Motion ¶ 14, note 16.

RESPONSE

7. If the JV Buyers are unable to reach an agreement with the Union on a new CBA, the Debtors may incur significant damage claims and unreimbursed withdrawal liability arising from the rejection of the existing CBAs. Additionally, the Debtors’ request to have the Motion construed as an application for relief under section 1113 of the Bankruptcy

Code does not appear to comply with the requirements of section 1113 and raises concerns as to the whether the JV Buyers' APA can be approved and consummated in the absence of an agreement between the JV Buyers and the Union. Giant remains ready, willing and able to close and consummate the Giant Bid for the sale of the Lot 1 Stores pursuant to the terms of the Giant APA, including the assumption and assignment of the Debtors' existing CBAs. Given the current uncertainties of the JV Bid (most significantly, the apparent lack of any agreement on a new CBA), Ahold hereby reserves all of its rights to raise objections and to be heard at the hearing on the Motion.

Dated: Miami, FL
June 7, 2011

WHITE & CASE LLP

By: /s/ Frank L. Eaton
Frank L. Eaton (FE-1522)
John K. Cunningham (JC-4661)
Wachovia Financial Center
200 South Biscayne Boulevard, 49th Floor
Miami, Florida 33131
Telephone: (305) 371-2700
Facsimile: (305) 358-5744

Attorneys for Ahold USA, LLC